



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION UPON REHEARING

CCO/153068

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 21, 2013, at Milwaukee, Wisconsin.

On December 9, 2013, a decision was issued ordering the Milwaukee Early Care Administration to amend its overpayment notice.

The Department of Children and Families submitted a rehearing request that was received by the Division of Hearings and Appeals (the Division) on December 20, 2013, asserting that Petitioner's appeal was untimely.

The rehearing request was granted on December 27, 2013, but another hearing date was not deemed necessary because testimony concerning the timeliness issue was taken at the hearing on November 21, 2013.

The issues for determination are whether Petitioner's appeal is timely and if so, whether the Milwaukee Early Care Administration (the agency) correctly determined that Petitioner was overpaid child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Attorney Joseph McCleer
Office of Legal Counsel
635 North 26th Street
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 4, 2013, the agency sent Petitioner a Child Care Client Overpayment Notification, BV referral Number [REDACTED], indicating that she was overpaid child care benefits in the amount of \$4,618.20 for the period of May 1, 2012 to December 31, 2012, specifically for the months of May, July, August, October and December 2012. (Exhibit 2, pgs. 13-14)
3. On September 5, 2013, the agency sent an automated Child Care Overpayment Notification, claim number [REDACTED], again indicating that Petitioner was overpaid child care benefits in the amount of \$4,618.20 for the period of May 1, 2012 to December 31, 2012. (Exhibit 2, pgs. 15 and 16)
4. The Petitioner called the agency on September 9, 2013 and spoke to Shawnte Julien, a Child Care Subsidy Specialist. At that time, Ms. Julien advised the Petitioner to file an appeal. (Testimony of Petitioner; Testimony of Ms. Julien; Exhibit 2, pgs. 11 and 12)
5. Sometime in September 2013, the Petitioner mailed in a request for fair hearing to the address listed in the Overpayment Notification, which is the post office box of the Division of Hearings and Appeals. (Testimony of the Petitioner)
6. The Petitioner then Googled "fair hearing" to obtain an agency phone number, called the agency, presumably the Division of Hearings and Appeals, and was told a fair hearing request form would be mailed to her. The Petitioner received the form, which was the same as the one she mailed earlier and kept in her records. (Testimony of Petitioner)
7. In October 2013, the agency sent Petitioner a repayment agreement. Petitioner then went to the agency and filed a request for fair hearing in person. (Testimony of Petitioner; Exhibit 1)
8. That request for fair hearing was received by the Division of Hearings and Appeals on October 25, 2013. (Exhibit 1)
9. Petitioner's assistance group size is 2. (Exhibit 2, pg. 14)

DISCUSSION

I. TIMELINESS

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Child Care Benefits must be filed within 45 days of the date of the action. Wisconsin Stat. §49.152(1); Wis. Admin. Code §HA 3.05. A negative action can be the denial of an application, the reduction of benefits, the termination of benefits, or as in this case, the recoupment of an overpayment of benefits.

The date of negative action here was September 5, 2013. Petitioner testified that she timely received the Notification of Child Care Overpayment. The Department of Children and Families argues that petitioner's appeal was filed on October 25, 2013, 50 days after the date of the action. Thus, it is the position of the Department of Children and Families that Petitioner's appeal was untimely, and no jurisdiction exists for considering the merits of the case.

However, Petitioner testified credibly that she spoke to an agency representative and mailed an appeal in September 2013, before the expiration of the 45-day appeal period. Petitioner's testimony is partially corroborated by the agency's Benefit Recovery Comments in Exhibit 2 and the testimony of Ms. Julien. Petitioner further testified that she filed a second appeal in October 2013, in person, after receiving the agency's repayment agreement. This is corroborated by Exhibit 1, which shows a fax number at the top belonging to the Department of Health Services, at the Marcia P. Coggs Human Services Building.

Per HA 3.05(3)(c), "A hearing request shall be considered filed on the date of actual receipt by the division or agency, or the date of the post-mark, whichever is earlier..." Given that the Petitioner mailed her first appeal in September 2013, the post-mark would have been in September 2013, well within the 45-day appeal period. Thus, her appeal is timely and jurisdiction exists for the Division of Hearings and Appeals to hear the merits of Petitioner's case.

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT IF EITHER THE RECIPIENT OR THE AGENCY WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Wisconsin Shares Child Care Assistance Manual*, §2.1.4.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. INCOME LIMITS

Petitioner did not dispute the fact that she used child care benefits in the amounts stated by DCF. However, Petitioner disagreed with the agency's determination that she was over the income limit.

In order for initial applicants to be eligible for Child Care benefits, household income must be below 185% of the Federal Poverty Limit (FPL). *Wisconsin Child Care Assistance Manual* §1.6.2 For on-going eligibility, income cannot exceed 200% FPL. *Wisconsin Child Care Assistance Manual* §1.6.3 Income is evaluated on the basis of gross monthly income. *Id.* at §1.6.4

This case concerns on-going benefits. As such, in order for Petitioner to be eligible for benefits during the times in question, her income needed to be at or below 200% FPL, which for an assistance group size of 2 was \$2522 in 2012 until January 24, 2013. See <http://aspe.hhs.gov/poverty/12computations.shtml>.

Petitioner did not contest the accuracy of the wage information contained in Exhibit 2, pages 40-41, which included a month by month verification of Petitioner's income between December 31, 2011 and January 12, 2013, as reported to the Work Number website. Based upon that information we have the following gross monthly income for the months in question:

May 2012: 5/25 check for \$1405.71 + 5/11 check for \$1201.28 = \$2606.99

July 2012 – 7/6 check for \$1864.44 + 7/20 check for \$1123.63 = \$2988.907

August 2012 – 8/3 check for \$1366.03 + 8/17 check for \$1119.89 + 8/31 check for \$2113.50
= \$4599.42

October 2012 – 10/12 check for \$1630.22 + 10/26 check for \$1032.70 = \$2663.01

December 2012 – 12/7 check for \$1223.05 + 12/21 check for \$1541.67 = \$2764.72

It is the agency's contention that overpayments occurred in the aforementioned months, because Petitioner did not correctly report changes in her income.

Petitioner was obligated to report any increases in her income that put her above the 200% FPL limit, within 10 days that the change occurred. *Wis. Admin. Code §DCF 201.04(2m); Wisconsin Shares Child Care Assistance Manual*, §§1.15.1 and 1.15.2.

For May 2012, the check that put Petitioner over the income limit was the May 25, 2012 check. If Petitioner had reported the change as required, she would not have needed to report the change until June 4, 2012. As such, there is no overpayment for May 2012.

Per *Wisconsin Shares Child Care Assistance Manual*, §1.15.3, if Petitioner had reported the change by June 4, 2012, the agency would have had to act on the change ten days after it was reported, in this case by June 14, 2012. The agency would then have to give Petitioner 10 days advance notice that her case was going to be closed. *Wisconsin Shares Child Care Assistance Manual*, §3.8.9. In addition, it appears eligibility determinations based upon income are done on a calendar month basis. See *Wisconsin Shares Child Care Assistance Manual* §§1.3.6, 1.3.6.1 and 3.8.3. Consequently, Petitioner's benefits could only have been terminated effective July 1, 2012. Thus, there was no overpayment for June 2012, either.

I note that as of July 2012, Petitioner's income was \$2988.07 and her August 2012 income was \$4599.42. This was over the 200% FPL continuing eligibility threshold of \$2522, so the agency correctly determined that Petitioner was overpaid child care benefits in July and August 2012.

I note that as of September 2012, Petitioner's income was \$2051.58. (See Exhibit 2, pg. 40) This was below the 185% FPL initial eligibility threshold of \$2332.85, so she would have been eligible again for benefits in that month. (See <http://aspe.hhs.gov/poverty/12computations.shtml>)

Looking at October 2012, the paycheck that put Petitioner over the income limit was dated October 26, 2012. As such, Petitioner had until November 5, 2012, to report the change in income. As such, there was no overpayment for October 2012. As discussed above, if all went according to policy, the earliest Petitioner's benefits would have been terminated, would have been December 1, 2012.

Petitioner's December 2012 income was \$2764.72. This was over the 200% FPL continuing eligibility threshold of \$2522, so the agency correctly determined that Petitioner was overpaid child care benefits in December 2012.

CONCLUSIONS OF LAW

1. Petitioner's appeal is timely.
2. The agency correctly determined that Petitioner was over-issued child care benefits in July 2012, August 2012 and December 2012.
3. The agency did not correctly determine the amount of the overpayment, because there was no overpayment for May 2012 or October 2012.

THEREFORE, it is

ORDERED

That the agency amend the September 2013 Child Care Overpayment Notice, BV Referral Number / Claim Number [REDACTED], to reflect an overpayment for July, August and December 2012 ONLY. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

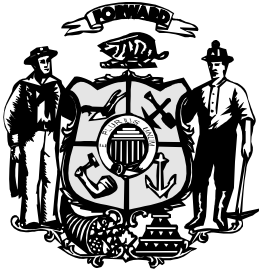
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of January, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 16, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud